

# KENTUCKY BOARD OF AUCTIONEERS

## PRINCIPAL AUCTIONEER, APPRENTICE AUCTIONEER, AUCTION HOUSE OPERATOR, LIMITED TOBACCO AUCTIONEER, AND LIMITED LIVESTOCK AUCTIONEER EXAMINATION STUDY GUIDE

The Kentucky Board of Auctioneers was created in 1962 for the primary purpose of protecting the public. This is accomplished through licensing and regulating auctioneers, apprentice auctioneers, auction house operators, limited livestock auctioneers, and limited tobacco auctioneers.

As required by the Auctioneers License Act of 1962 (KRS 330), the Kentucky Board of Auctioneers offers examinations for auctioneer, apprentice auctioneer, livestock auctioneer, and tobacco auctioneer licenses four times a year. Examinations for auction house operator licenses are administered a minimum of four times a year. The examinations are designed to protect the public by ensuring a minimum level of competence for licensees.

Today the field of auctioneering encompasses a vast array of types and kinds of auctions. It is impossible for the examination to cover all possible types and kinds of auctions a licensee might encounter. Instead, the examination attempts to cover auction law, general auction practice, professional ethics, terminology, mathematics, sales tax, plus common areas and auction types most likely to be encountered by the majority of today's auctioneers and auction house operators.

The object of this study guide is to assist the applicants with their study and preparations for the examination by providing basic information and areas for study. The final responsibility for the complete study and proper preparation for the examination rests with the applicant and may require other sources.

The material in this Study Guide is intended solely for the purpose of preparation and study for the Kentucky Principal Auctioneer, Apprentice Auctioneer, Auction House Operator, Limited Livestock Auctioneer, and Limited Tobacco Auctioneer License examination applicants. This material is limited in scope and has been structured and written specifically for its intended purpose. Therefore, this Study Guide is not intended to be applicable for any other use or purpose.

### EXAMINATION FORMAT

Each examination is divided into sections. **The first section** tests the applicant's knowledge of general information relevant to auctioneering in Kentucky, the laws governing auctioneering, ethical considerations, auction practice, and terminology. **The second section** deals with mathematics. **The third section** encompasses contracts. **The fourth and fifth sections** consist of questions about a closing statement, and the opening and closing remarks. The answers are in a multiple-choice format or true and false format. The examination lasts three hours.

	PRINCIPAL AUCTIONEER	APPRENTICE AUCTIONEER	AUCTION HOUSE OPERATOR	LIMITED LIVESTOCK / LIMITED TOBACCO
1. General Questions	√	√	√	√
2. Math Questions	√	√	√	√
3. Contract Questions	√	√	√	
4. Closing Statement Questions	√		√	
5. Opening/Closing Remarks Questions	√			
6. Kentucky Auctioneer Law	√	√	√	√

The question and point format for the **apprentice auctioneer** examination is:

120 questions on law and general subjects, ½ point each.

10 questions on mathematics, 3 points each.

20 questions on the auction-listing contract form, ½ point each.

150 questions, 100 possible points, 75 point minimum score required to pass.

The question and point format for the **principal auctioneer examination** is:

100 questions on law and general subjects, ½ point each.

10 questions on mathematics, 1 point each.

20 questions on the auction-listing contract form, ½ point each.

20 questions on the closing statement, ½ point each.

10 questions on the opening and closing remarks, 2 points each

160 questions, 100 possible points, 75 point minimum score required to pass. The points are weighted.

The question and point format for the **auction house operator** examination is:

110 questions on law and general subjects, ½ point each.

10 questions on mathematics, 1 point each.

18 questions on the auction-listing contract form, 1 point each.

17 questions on the closing statement, 1 point each.

155 questions, 100 possible points, 60 point minimum score required to pass.

The question and point format for the **limited livestock/tobacco auctioneer** examination is:

40 questions on law and general subjects, 2 points each.

10 questions on mathematics, 2 points each.

50 questions, 100 possible points, 60 point minimum score required to pass.

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## 1. GENERAL QUESTIONS

### AUCTION LAW, PRACTICE, AND ETHICS

Questions on the examination will test your knowledge and understanding of auction law, practice, and ethics, as well as your ability to apply your knowledge and understanding of actual “real life” situations. A copy of auction related laws is included along with this study guide and should be thoroughly studied and understood. These consist of:

1. The Auctioneers License Act of 1962, Kentucky revised Statutes Chapter 330, as amended.
2. The Six Regulations of the Kentucky Board of Auctioneers.
3. Uniform Commercial Code section “Sale By Auction” KRS 330.2-328

**The KRS numbers are given for reference only and do not need to be memorized for the examination.**

#### Terminology

Part of the terminology for this section is covered on the first page of the auctioneers License Act (KRS 330.020). It is very important that you know and understand in detail all of the terminology and the three types of auctions.

## **Other Terminology**

**Buyer's Premium-** A fee charged to buyers at some auctions. The buyer's premium is a percentage that is added to the last or final bid to determine the actual selling price. If the item selling is personal property, then sales tax should be figured on the actual selling price, the bid price plus the premium. If the item is real estate, then the "sale price" (what is recorded on the deed) is also the bid price plus the premium.

**Bona Fide-** A legal term which means that a person or entity is acting "in good faith, without dishonesty, fraud, or deceit."

**Prima Facie-** A legal term that indicates evidence is sufficient to establish an allegation as reasonably probable. A strong appearance of a wrongful act. The facts in a complaint against a licensee must constitute prima facie evidence before the Board of Auctioneers will grant a hearing.

**Reciprocate/Reciprocity-**The mutual exchange of rights or privileges, such as the mutual recognition and exchange of auctioneer's licenses between states.

**Fair Market Value-**The estimated price that a willing seller will take for goods and a willing buyer will give, if neither buyer nor seller is under any compulsion or undue influence to buy or sell. The price an item brings at a properly advertised and conducted auction will be a controlling factor in determining that item's fair market value.

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## **Types of Auctions**

**1. Absolute Auction-**After the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time (KRS 330.2-328). An auction without reserve means an absolute auction (KRS 330.220 Par.3).

**The law provides certain requirements regarding absolute auctions (KRS 330.220).** It is important that you study this law in detail. The following is a synopsis to assist you with your study of this important section.

**1.** No auction can be advertised "absolute" or with similar meaning unless (a), (b), and (c). are met.

**(a)** **1.** There can be no liens or encumbrances, except current taxes.

***OR***

**2.** All lien holders sign the absolute auction contract or a binding commitment agreeing to sell to the highest bidder.

***OR***

**3.** A financially responsible person, firm, or corporation signs the absolute auction contract or a binding commitment to guarantee that the liens will be paid regardless of the high bid.

**(b)** There must be a bona fide intent to transfer ownership at the time of advertising and at the time of the auction regardless of the bid or bidder.

**(c)** The listing contract must state that the auction is "absolute" or "without reserve" and that in no way shall the seller, or anyone on the seller's behalf, bid.

2. The above does not prohibit:
  - (a) A secured party from bidding as long as this does not establish a reserve.
  - (b) An individual involved in dissolution of marriage, partnership, or corporation from bidding following that dissolution.
  - (c) The non-misleading advertising, with equal emphasis, of “absolute” and “reserve” items in the same auction.
3. Except as noted above, the seller may not bid at an absolute auction, nor may anyone bid upon his/her behalf. No licensee shall knowingly receive such a bid by or on behalf of the seller.

**2. Auction With Reserve-** The auctioneer may withdraw the goods at any time until he announces completion of the sale (KRS 330.2-328). The goods may be put up subject to the seller’s confirmation or subject to a certain reserve price (KRS 330.220 Par. 3). At an “auction with reserve” the seller has the right to reject or confirm a bid. This does not automatically give the seller, or anyone acting on the seller’s behalf, the right to bid (KRS 330.220 Par. 4(c) & KRS 330.2-328 Par. 4).

**3. Auction With Reserve and the Seller Reserving the Right to Bid-** The auctioneer may withdraw the goods at any time until he announces completion of the sale (KRS 330.2-328). The goods may be put up subject to the seller’s confirmation or subject to a certain reserve price (KRS 330.220 Par. 3). The seller, or someone acting on the seller’s behalf, may bid, provided that full disclosure has been made that liberty for such bidding is retained. No licensee shall knowingly receive such a bid without this full disclosure (KRS 330.220 Par. 4(c) & KRS 330.2-328 Par. 4).

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### **Additional Auction Law and Principles**

1. All auctions are presumed to be with reserve unless they are explicitly absolute or without reserve (KRS 330.220 Par. 3 & KRS 330.2-382 Par. 3).
2. There is no requirement that at an auction with reserve the reserve must be announced when it is attained (KRS 330.220 Par. 4(d)).
3. Licensees may bid on their own behalf provided that this has been fully disclosed to the bidders and the seller (KRS 330.220 Par. 4(a)).
4. Each lot sold separately at auction is the subject of a separate sale (KRS 330.2-328 Par. 1).
5. A sale by auction is complete when the auctioneer announces the item sold or “by the fall of the hammer”(KRS 330.2-328 Par. 2). However, at a real estate auction, the agreement between buyer and seller must be put into a written sales and purchase contract to be enforceable.
6. If a bid is made “while the hammer is falling” in acceptance of a bid, then the auctioneer may reopen the bidding to all bidders, reopen the bidding between the two final bidders, or declare the goods sold (KRS 330.2-328 Par. 2).
7. Regardless of the type of auction, a bidder can always retract her/his bid at any time before an item sells (before the “hammer falls”) (KRS 330.2-328 Par. 3).
8. If a bidder does retract her/his bid this does not automatically revive any of the previous bids (KRS 330.2-328 Par. 3).
9. If an auctioneer knowingly takes a bid on the seller’s behalf and notice for the seller reserving the right to bid has not been given, then the buyer may avoid the sale or take the item at the last good faith bid, except at forced sales (KRS 330.2-328 Par. 4).
10. Generally speaking, once an item is sold to the highest bidder the sale is final; however, an item can be “resold” or considered “not sold” if the buyer and seller agree.

11. An auctioneer, at his/her discretion, can accept or refuse bids from anyone who lacks contractual legal capacity such as a minor, an intoxicated person, or someone who is mentally incompetent (See the Study Guide section on contracts).
12. An auctioneer may reject or refuse to accept bids that are considered trifling increases over the preceding bid.
13. The Kentucky Board of Auctioneers will hold the auction house operator and auctioneer responsible for all aspects of an auction conducted in a legal, ethical, and proper manner.
14. An apprentice can only be under the supervision of one principal auctioneer at any one time. A principal auctioneer is responsible to the Board for any actions of her/his apprentices that may be a violation of the Auctioneers License Act of 1962.
15. All employees of an auctioneer or an auction house operator are that auctioneer's and/or auction house operator's agents, and as such, the auctioneer and auction house operator can be held accountable and libel for an employee's auction-related statements and/or actions.
16. There is no legal requirement that auction staff such as ringmen, bid spotters, clerks, or cashiers must be licensed to work an auction, as long as their duties do not fall under the definition of auctioneer, apprentice, or auction house operator.
17. Absentee bids are allowed at an auction at the discretion of the auctioneer and/or auction house operator; and these bids can be handled by whomever the auctioneer and/or auction house operator so designates.
18. Auction "Finder's Fees" can be paid only to individuals licensed by the Kentucky Board of Auctioneers, or when involving real estate sold at auction, a real estate "Finder's Fee" can also be paid to a real estate licensee.
19. An auction house operator is required to provide a receipt or receipts to all individuals or businesses placing merchandise with him/her for sale at auction. Also, he/she must keep a copy of each receipt given for merchandise and give a true copy of the receipt or receipts to the owner of the property accepted for sale at auction.

**REMEMBER THAT THE KRS NUMBERS ARE GIVEN ONLY FOR REFERENCE AND DO NOT NEED TO BE MEMORIZED FOR THE EXAMINATION.**

### **SAMPLE QUESTIONS**

1. The Kentucky Board of Auctioneers is appointed by vote of the Kentucky General Assembly.
  - A. True
  - B. False

**Discussion** - The correct answer is **B.** (False). Section 330.050 Par.1 of the Auctioneers License Act of 1962 states that the governor shall appoint the members of the Board.

2. All Auctioneer's licenses expire
  - A. On January 1.
  - B. On June 30.
  - C. On January 31.
  - D. Each year on the date that the auctioneer was originally licensed.
  - E. None of the above.

**Discussion** - The correct answer is **B.** (June 30). Section 330.070 Par. 3 (a) of the Auctioneers License Act of 1962 specifies the renewal date of June 30.

3. A buyer who discovers that a seller bid on his own goods, without prior notice for such bidding, can by law insist that the item be resold.

- A. True
- B. False

**Discussion** - The correct answer is **B. (False)**. This was an illegal act by the seller; however, insisting that the item be resold is not an option available to the buyer under the law. See KRS 330.2 -328 Par.4.

4. Charlie Sims is a principal auctioneer and Larry is one of his apprentices. Last Saturday Larry worked as a ringman and a bid caller at an auction in the next county for auctioneer Frank Goss. Which of the following statements is correct?

- A. This arrangement is legal as long as Charlie gave Larry permission to work for Frank, but Larry cannot in any way receive any kind of pay for this work.
- B. Larry can work as an apprentice and receive pay from other auctioneers, but only with Charlie's permission.
- C. Larry can work as an apprentice for other auctioneers, but only with Charlie's permission. However, even with Charlie's permission to work for other auctioneers, Larry can only receive pay, for working as an apprentice, through Charlie.
- D. Under no circumstances can Larry work, as an apprentice auctioneer, for any auctioneer other than Charlie.
- E. None of the above is correct.

**Discussion-** The correct answer is **C**. Larry can work and be paid as an apprentice for other auctioneers but only with the permission of his principal auctioneer and only if he receives his pay, if any, through his principal auctioneer. In the above example Frank would have had to send Larry's pay to Charlie and then Charlie would pay Larry. See KRS 330.110 Par.4.

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## **ESCROW ACCOUNTS**

**Escrow Account-** A special account in which funds belonging to others are kept separate and apart from the auctioneer's own business or personal funds.

### **Basic Requirements for Escrow Account**

- 1. All proceeds resulting from an auction and being held for settlement must be kept in an escrow account.
- 2. Funds from more than one auction can be placed into the same escrow account.
- 3. If the auction consists of both personal property and real estate, then the proceeds from both can be held in the same escrow account.
- 4. An auctioneer or an auction house operator cannot pay auction-related expenses directly from the escrow account. After an accounting and full settlement with the seller, the auctioneer/auction house operator then transfers his/her commission and expense money due, if any, from the escrow account into the auctioneer's or auction house operator's business account. It is from this business account that all expenses are to be paid.
- 5. If an escrow account is interest bearing, then all parties should agree in writing as to the disposition of the interest.

## **Disbursement of Escrow Funds**

Generally, the paying out of funds in an auction escrow account occurs in one of the following ways:

1. Upon an accounting and full settlement (if real estate, then upon settlement at closing).
2. Upon the written agreement of all parties.
3. Under the specific terms of the auction-listing contract.
4. By court order.

The disbursement of any real estate escrow funds must also follow the appropriate real estate laws and regulations.

### **SAMPLE QUESTION**

1. John Harris is a real estate broker and an auctioneer. After his last auction he placed the proceeds from the personal property and the real estate down payment in the same escrow account. Was this legal?

- A. Yes
- B. No

**Discussion** - The correct answer is **A.** (Yes). It is legal to place funds from both personal property and real estate in the same escrow account. See the proceeding basic escrow account requirement number 3.

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## **ADVERTISING**

**All public auctions are advertised in some way. The following are some basic auction advertising guidelines.**

1. The Kentucky Board of Auctioneers will hold the auction house operator and the auctioneer responsible for the type, manner, and content of an auction's advertising.
2. An auction cannot be advertised in any way until an auction-listing contract has been properly signed.
3. Certain basic information regarding the advertising should be included in the auction listing contract including:
  - a. Who will be responsible for paying the advertising expenses and when.
  - b. What will be the type of advertising and the budget?
  - c. If the auction is to be advertised as absolute, then all requirements under the absolute auction law must be followed (see the Study Guide section on absolute auction).
4. All advertising for an auction must include the auctioneer's name and signify that he/she is an auctioneer. The auctioneer's license number may also be listed, but it is not required.

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## **WARRANTY LAW**

There are several aspects of warranty law that affect an auctioneer and auction house operator; however, for the examination you only need to be familiar with the general provisions of the warranty law for exclusion or modification of implied warranties (KRS 355.2-316).

1. In many instances auctioneers will sell an item "as is" and/or "with all faults", generally this means the auctioneer and the auction house operator does not warrant or guarantee an item's condition or authenticity.

2. Statements of fact or promises made, by an auctioneer or an auction house operator or their employees, regarding an item are not affected by such language; and, as such, the auctioneer and auction house operator can be held accountable for all statements of fact or promises.

## **REAL ESTATE**

These boxed paragraphs on REAL ESTATE are applicable in detail to the Principal & Apprentice exams. The auction house operator, livestock auctioneer, and tobacco auctioneer exams may cover general information from this section. As this section of the Study Guide suggests, the examination emphasis on real estate is basic terminology.

**Real Estate/Real Property-** Land and all interests therein including all improvements to the land, such as buildings, fences, and fixtures.

**Fee Simple-** The highest type of real estate ownership recognized by law. It is complete ownership for all time and is the most common type of ownership.

**Life Estate-** A temporary ownership of real estate. Usually the life estate ownership expires at the death of a designated person. This type of ownership is more often in family situations where one family member retains ownership of the family property until his/her death, at which time ownership transfers to another family member. Interest in property held in a life estate may be sold, but rights to the property end at the death of the individual to whom the life estate was originally given.

**Eminent Domain-** The federal, state, and local government's right to take property after adequate compensation for the purpose of using the land for the public good. Examples include land taken for highways, urban renewal projects, airport expansion, schools, and parks, plus for the use of power companies, telephone companies, natural gas companies, and railroads.

**Lease-** An agreement that conveys the use and possession, but not ownership, of property for a specified period. Unless a lease is released or expires, that lease remains with the property even if that property is sold. Leases for a year or more must be in writing.

**Encumbrances-** Any binding adverse interest, claim, charge, or liability on a property which in some manner burdens or diminishes the value of the property. Common encumbrances include the following:

**1. Lien-** An adverse claim or charge against a property when that property is being used as collateral for a debt or a legal interest created upon non-payment of a debt such as unpaid taxes or contractor's bills. Tax liens usually take priority over other liens and are paid off first when a property is sold. When property is sold, any unpaid liens are usually paid off at the time of transfer (closing). If the liens are not paid, transferred, or released at the time of closing; then they would remain on the property.

**2. Mortgage-** A document which pledges property as security for a loan. A mortgage is a type of lien that becomes void on payment or performance according to stipulated terms. An additional mortgage on a property is called a second or junior mortgage. Usually when a property is sold, the first mortgage is paid off before the second or junior mortgage.

**3. Restrictions-** Private agreements placed in the public record that affect or limit the use of real property. Restrictions include things such as building specifications on new homes in a subdivision or limitations as to the future use of a property.

**4. Easements-** A right acquired by one party to the limited use of property owned by another. Easements are accesses to landlocked properties and rights of way for power or telephone lines. Easements usually pass with the title to a property.

**Grantor-** The seller of real property, the grantor, conveys title of the property to the grantee, the buyer. The grantor must be legally competent to convey title to the property; and if the grantor has a spouse, she/he must also sign the listing contract and the deed.

**Grantee-** The buyer of real property, the grantee, receives title of the property from the grantor, the seller. The grantee must be correctly identified in the deed.



**Deed-** A written document by which the grantor conveys to the grantee an interest, usually ownership, in real property. A deed must recognize that the grantor received valuable consideration for the property and describe the property such that a competent surveyor could locate the plot of the property. The deed should specify any exceptions or reservations to the deed, including encumbrances, liens, mortgages, taxes, restrictions, easements or limitations of the title. To be valid, a deed must be properly signed and delivered. While it is recommended that a deed also be recorded, it is not required.

### **COMMON TYPES OF DEEDS**

**1. General Warranty-** A deed in which the grantor warrants the greatest protection. This is the most common type of deed. The grantor warrants or guarantees the following:

- a. That the grantor has the right to convey title to the property.
- b. That there are no liens or encumbrances other than those stated in the deed.
- c. That the title is good against any other claims.
- d. That the grantor will deliver any other documents needed to make the title good.
- e. That if the title fails at any time in the future, the grantor will compensate the grantee.
- f. That the above guarantees cover not only the time that the grantor owned the property, but also extends back through time to all previous owners.

**2. Special Warranty-** A deed in which the grantor warrants or guarantees the title against encumbrances or defects that may have occurred only during the grantor's period of ownership, other than as described in the deed. This deed limits the liability of the grantor to the grantee.

**3. Quitclaim-** A deed which conveys only such ownership as the grantor may have. If the grantor has good title, then the deed conveys that ownership, but without any warranty or guarantee. A quitclaim deed provides the grantee with the least protection of any type of deed and is often used to release doubtful claims, interests, and liens.

**4. Deed of Correction-** A deed that changes information or corrects a mistake in a prior deed, but does not transfer ownership of the property.

Remember, a real estate auction-listing contract must conform to all applicable auction and real estate laws and Regulations; and if the seller is married, then the spouse must also sign. Real estate sales and purchase contracts must be in writing to be enforceable.

### **SAMPLE QUESTION**

1. From the standpoint of the grantor, which one of the following types of deeds creates the least liability?
- A. Special Warranty
  - B. General Warranty
  - C. Quitclaim
  - D. A. and B. create an equal amount of limited liability.
  - E. B. and C. create an equal amount of limited liability.

**Discussion -** The correct answer is C. (Quitclaim). The grantor is the seller and from the seller's standpoint, a Quitclaim deed creates the least liability. See the above Study Guides section on the types of deeds.

## **ESTATES**

**Estate-** A person's complete financial status or condition with reference to all assets, possessions, and rights and all their debts, liabilities and obligations.

**Testate-** To die with a valid will.

**Intestate-** To die without a valid will.

**Executor (male), Executrix (female)-** The person specified in a will (by the person making the will) to carry out the wills provisions.

**Administrator (male), Administratrix (female)-** The person appointed by the court to oversee the settling of an estate where there is no will, or the will is not valid, or when the named Executor or Executrix is not specified or cannot or will not serve.

For an estate auction the auctioneer and/or the auction house operator must be certain that the person signing the auction-listing contract has the proper legal authority. That person must be the duly confirmed Executor/Executrix or the duly appointed Administrator/Administratrix.

### **SAMPLE QUESTION**

**1.** Sam Turner died last year intestate. Mary Snelling, Sam's sister, has contacted auctioneer Tom Turner about a possible auction to settle Sam's estate. Mary has told Tom that Sam died intestate and that she is the Executrix for Sam's estate. Which of the following statements is correct?

- A.** Tom should have Mary sign an auction-listing contract as the Executrix as soon as possible.
- B.** If Sam died intestate, then that means he died without a valid will and as such the estate would have an Administrator or Administratrix not an Executrix. Tom should not sign the auction-listing contract with Mary.
- C.** Sam died intestate. This means that he died inside the Commonwealth of Kentucky and Mary, as the estate's Executrix, can sign the auction-listing contract with Tom.
- D.** It does not matter whether Mary is the Executrix or not, as Sam's sister she can authorize the auction.
- E.** None of the above are correct.

**Discussion -** The correct answer is **B**. If Sam died intestate, Mary cannot be the Executrix. If Tom wants to conduct Sam's estate auction, he needs to negotiate with and sign the auction-listing contract with the Administrator or Administratrix. See the above Study Guide section on estates.

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## **FIREARMS**

To sell firearms at auction, the auctioneer must follow auction laws and regulations plus Federal and State Firearms Laws and Regulations.

### **Guidelines from Federal and State Firearms Laws and Regulations Include**

- 1.** An auctioneer or an auction house operator without a Federal firearms dealer's license, can "*occasionally*" sell most firearms at auction where they are a part of the lot of goods being sold. However, if the auctioneer or auction house operator reaches a point that the auctioneer/auction house operator could be considered to be "*engaged in the business of selling firearms or ammunition at wholesale or retail,*" then the auctioneer or auction house operator would obtain a Federal firearms dealer's license.
- 2.** If an auctioneer or an auction house operator buys firearms for the purpose of resale, then that auctioneer or auction house operator would obtain a Federal firearms dealer's license.

3. An auctioneer, without a Federal license, can only sell a firearm to a resident of the state in which the auction is being held, unless the purchaser is a licensed Federal firearms dealer.
4. That auctioneer can only sell a shotgun or rifle to a purchaser who is at least 18 years old, and a handgun to a purchaser who is at least 21 years old.
5. Some types of firearms, such as machine guns, short-barreled shotguns or rifles, and hand-held guns with a smooth bore which chambers a shotgun shell, are strictly controlled and cannot be sold by an auctioneer without the proper Federal firearms license or pursuant to a Federal Court order and under the supervision of The Department of Alcohol, Tobacco, and Firearms.
6. Most antique guns made before 1898 and that do not use center fire cartridges are considered and sold as antiques not guns, and as such, are exempt from the above guidelines.

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## **ALCOHOLIC BEVERAGES**

KRS 194.189 Agents, auctioneers, brokers, etc., acting on behalf of others.

Certain persons may sell liquors as agents or employees of others, or receive and transmit orders therefor to a dealer, without being considered liquor or beer dealers on account of such activities; they are as follows:

- a) Auctioneers who merely sell liquors at auction on behalf of others,
- b) Agents or brokers who merely solicit orders for liquors in the name of a principal, but neither stock nor deliver the liquors for which orders are taken,
- c) Employees who merely sell liquors on behalf of their employers, and
- d) Retail dealers in liquors or retail dealers in beer who merely receive and transmit to a wholesale dealer orders and liquors or beer to be billed, charged, and shipped to customers by such wholesale dealer.

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## **LIVESTOCK**

Before livestock can be sold at auction, there are certain tests and health certificates required. For the purpose of the examination you do not need to know the different tests and certificates. It is important that you understand that it is the auctioneer's responsibility to see that the required tests are completed and the appropriate health certificates obtained prior to the auction.

### **Additional study material for the livestock auctioneer applicant:**

A limited livestock auctioneer's license is only permitted to be used at livestock auctions, at fixed base livestock yards only.

Bids are increased in any increments in a livestock auction.

The asking bid is chanted by the livestock auctioneer.

The auctioneer settles any disputed bid.

The livestock auctioneer does not have to have an escrow account where he works.

If the livestock auctioneer makes it known to the audience, then he is permitted to bid at the stockyard when he is bid calling.

By law, the livestock auctioneer is only permitted to sell for two hours with a two hour break.

The livestock auctioneer does not pay the clerk, at the stockyards, out of his salary.

Livestock auctioneers may sell hogs, cattle and sheep at the same stockyards on the same day under the same license.

A livestock auctioneer may sell for more than one stockyard on the same license.

Continuing education is not required of the limited livestock auctioneer.

**Additional study material for the tobacco auctioneer applicant:**

Continuing education is not required of the limited tobacco auctioneer.

In the United States, \_\_\_\_\_ states use the auction method to sell tobacco.

In the United States, \_\_\_\_\_ states produce tobacco.

The tobacco auction sales team consists of a starter or warehouseman, auctioneer, ticket handler, and a ticker marker.

The tobacco auctioneer makes his contract or agreement with the Board of Trade and/or warehouseman.

Bids are increased by \$1.00 increments in a tobacco auction.

If there is a disputed bid in a tobacco auction sale, it is settled by the auctioneer.

The limited tobacco auctioneer license does not permit the licensee to solicit any other types of auctions.

There is not a written law that requires tobacco auctioneers to be licensed and bonded in every state in the US.

The tobacco auctioneer always chants the bid that is given to him,

**SALES TAX**

**The Kentucky Sales and Use Tax Law and Regulations are very lengthy. For the examination you should know and understand the following points.**

1. Kentucky Sales Tax is currently 6%.
2. Under the Kentucky Sales Tax law, sales at auction are considered “retail sales” and as such, auctions are subject to sales tax.
3. All auction house operators and auctioneers conducting an auction in Kentucky are required, themselves or through their auction company, to maintain a Sales and Usage Tax permit reporting number.
4. Auctioneers and auction house operators are required to collect sales tax on taxable items from non-exempt purchasers. The Kentucky Revenue Cabinet will consider the auctioneer and the auction house operator as the party responsible for remitting any sales tax due from an auction (regardless of whether or not the tax was actually collected).
5. Auctioneers and auction house operators must remit sales tax due to the Kentucky Revenue Cabinet on the remission schedule as signed, (monthly, quarterly or annually) based on the volume of sales. The tax receipts must be submitted within 20 days of the end of your assigned period. If you had no sales during that period, a signed return is still required.
6. Remember, at auctions with a buyer’s premium, the sales tax should be figured on the actual sales price (bid price *plus* the premium).
7. **Non-taxable items** most likely encountered by auctioneers include:
  - a. **Real Estate and Services-** in Kentucky, sales tax applies only to non-exempt personal property.
  - b. **Grocery Store Foods-** Most edible foodstuffs that are not considered luxury foods are non-taxable. Luxury foods that include soft drinks, candy, alcoholic beverages and prepared foods purchased for immediate consumption, such as at a restaurant, are taxable.
  - c. **Motor Vehicles-** Registered licensed motor vehicles (including motorcycles) are taxed by the County Clerk when title is transferred at the Clerk’s office. For the examination it shall be assumed that the buyer will pay the auctioneer the purchase price of the vehicle and then meet the seller on the next business day at the County Clerk’s office to transfer the vehicle and at that time pay the appropriate Sales and Usage Tax.

**8. Tax-exempt Purchasers-** There are three categories of tax-exempt purchasers most common at auctions.

**a. Dealers-** Individuals or businesses that buy items at auction for resale (not to use) are not required to pay sales tax. These “Dealers” are required to have their own Sales and Usage Tax Permit Number and *must* complete a Resale Certificate that the auctioneer must keep on file for a least four years.

**b. Tax-exempt Institutions and Organizations-** Certain groups are exempt from sales tax when purchasing items for that group. Such groups include: Religious Organizations (Churches), Charitable Organizations, Non-Profit Educational Agencies, and Historical Sites. These purchasers must have an exemption number and complete a Purchase Exemption Certificate.

**c. Agricultural Purchases-** Items which farmers purchase for direct use in the production of crops as a business or in the occupation of raising and feeding livestock or poultry or producing milk for sale are not taxable. Such items include farm machinery and repair parts, seed, fertilizer, farm chemicals, feed and supplements, dairy or breeding livestock that will constitute food for human consumption, and framework stock. The auctioneer is required to have the purchaser complete the proper Farm Machinery Exemption Certificate or the Agricultural Exemption Certificate.

**9. Penalties-** An auctioneer and auction house operator are liable for any sales tax due if the auction house operator auctioneer do not meet his/her responsibilities under the law. These responsibilities include using “good faith” to determine if the item and/or purchaser is tax exempt and acquiring and maintaining the proper Exemption Certificates.

## **SAMPLE QUESTION**

**1.** Auctioneer Jeff Hunt (auction house operator Jeff Hunt) conducted an auction. The auction cashier obtained the names and exemption numbers from the tax-exempt purchasers, but did not have them complete Exemption Certificates. As long as the names and numbers are kept on file this procedure is proper.

**A.** True

**B.** False

**Discussion -** The correct answer is **B.** (False). Exemption Certificates must be completed. Names with Sales and Usage Tax Permit Numbers themselves, without the completed Exemption Certificates, are not sufficient under the Kentucky Sales and Use Tax Law. See the Study Guide section on sales tax.

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## **SPELLING**

There will be questions on the examination regarding the proper spelling of auction related terminology. To prepare for these questions you should especially note the terminology that appears throughout this Study Guide in the bold print.

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## **2. MATHEMATICS**

This section of the examination will cover types of basic mathematical computations that most auctioneers might encounter in the course of their auction practice. All mathematics questions on the examination will be multiple-choice. On the examination round all answers, if needed, to two decimal places. When the third decimal place is 5 or above, round up. When the third decimal is 4 or below, round down. For example, if your calculations come to 3.545, round up your answer to 3.55. If your calculations come to 3.544, round down your answer to 3.54.

*Due to space limitations this section of the study guide is not complete.* Applicants should prepare by using other sources of study, such as a good high school level mathematics textbook that covers the following areas:

**1.** Basic addition, subtraction, multiplication and division.

**2.** Fractions and percentages (especially for commission rates).

3. Formulas for converting fractions into decimals and decimals into fractions.
4. Formulas for determining the area and perimeters of geometric figures such as squares and rectangles.
5. Methods for solving principal and interest problems.
6. Methods for determining profit and loss.

Math problems on the examination may require knowledge in other areas such as sales tax. You also need to know that one acre contains 43,560 square feet.

### SAMPLE QUESTIONS

1. A rectangular lot contains 34,875 square feet. The width is 125 feet. What is the depth of the lot?
  - A. 379 feet
  - B. 279 feet
  - C. 250 feet
  - D. 125 feet
  - E. Cannot be determined from the information given.

**Discussion** - The correct answer is **B.** (279 feet). Since you know that the area of a rectangle is its length times its width, you can find the depth by dividing the width into the area.

34,875 square feet in the area divided by 125 feet in the width = 279 feet in the depth

2. A farm has  $\frac{1}{4}$  of its land in woodland,  $\frac{1}{5}$  in pasture, and the remainder under cultivation. If the woodland is 150 acres, how many acres are under cultivation?
  - A. 270 acres
  - B. 272.73 acres
  - C. 330 acres
  - D. 600 acres
  - E. Cannot be determined from the information given.

**Discussion** - The correct answer is **C.** (330 acres).

**Step One** – How many acres are in the whole farm?

You are told that  $\frac{1}{4}$  of the farm is woodland and that the woodland is 150 acres. This means that the farm has a total of 600 acres. 150 Acres of woodland x 4  $\frac{1}{4}$  of the total farm is woodland = 600 acres total for the farm

**Step Two** – What percentage of the farm is in woodland and pasture?

Convert  $\frac{1}{4}$  and  $\frac{1}{5}$  into decimals ( $\frac{1}{4} = .25$ ,  $\frac{1}{5} = .20$ ).

.25 Woodland + .20 Pasture = .45 total area in woodland and pasture

45 % of the farm is in woodland and pasture.

**Step Three** – What percentage of the farm is under cultivation?

You now know that the woodland and pasture make up 45% (.45) of the farm, and of course the whole farm is equal to 100% (1.00). This means that the acres under cultivation must be 55% (.55) of the farm.

100%	1.00	The whole farm
	- .45%	OR - .45 Woodland and pasture
	55 %	.55 Under cultivation

**Step Four** – How many acres are under cultivation?

You now know that the farm has a total of 600 acres and that .55 or 55% of those acres are under cultivation. This means that there are 330 acres under cultivation.

600 Acres
<u>x .55</u> Percentage of farm in cultivation.
330 Acres under cultivation

3. You are advertising an auction and have 5,000 handbills printed at a cost of \$125 per thousand. You insert a two column, eight inch ad in the local newspaper to run two days at a rate of \$4.50 per column inch per day. What is the total of the above advertising costs?

- A. \$625.
- B. \$659.
- C. \$697.
- D. \$769.

**Discussion** - The correct answer is **D.** (\$769.).

**Step One**

\$125. Cost of handbills per thousand  
x 5 Number of thousands of handbills  
 \$625. Total cost of handbills

**Step Two**

2 Number of ad columns  
x 8 Number of ad inches  
 16 Total number of ad column inches, per day  
x \$4.50 Rate per column inch, per day  
 \$72.00 Total ad cost per day  
x 2 Number of days ad ran  
 \$144.00 Total cost of newspaper ads

**Step Three**

\$625. Cost of handbills  
+ 144. Cost of newspaper ads  
 \$769. Total cost of advertising

4. You conducted an auction for a client. The sale total was \$41,225. Sales tax collected was \$2096.25; your fee is 8%; advertising was \$640.; and the labor was \$550. Assume that there were no other expenses and that the seller had agreed in the auction listing contract to pay the advertising and labor expenses. What were the net proceeds of the auction due to the seller?

- A. \$34,640.75
- B. \$34,808.45
- C. \$36,737.00
- D. \$38,833.25

**Discussion** - The correct answer is **C.** (\$36,737.00).

**Step One**

\$41,225. Total Gross Sales  
x 8% Commission Rate  
 \$ 3,298. Total Commission

**Step Two**

\$3,298. Commission  
 640. Advertising  
+ 550. Labor  
 \$4,488. Total Expenses to Seller

**Step Three**

\$41,225. Total Gross Sales  
- 4,488. Total Expenses to the Seller  
 \$36,737. Net to Seller

The \$2,096.25 collected for sales tax is between the auctioneer and the Kentucky Revenue Cabinet, and does not affect the net proceeds to the seller.

5. A man invested \$9,000. at 7 1/4% interest per annum and \$3,500. at 5 1/2% interest per annum. How much money did he have after a year?

- A. \$855.00
- B. \$12,500.00
- C. \$13,345.00
- D. \$13,402.25

**Discussion** - The correct answer is C. (\$13,345.00).

**Step One** – Convert 7 1/4% and 5 1/2% into decimals

$$7 \frac{1}{4}\% = 7.25\%$$

$$5 \frac{1}{2}\% = 5.5\%$$

**Step Two**

\$9,000.00 Amount invested

x 7.25% Rate of interest

\$ 652.50 Interest earned for one year

**Step Three**

\$3,500.00 Amount invested

x 5.5% Rate of interest

\$ 192.50 Interest earned for one year

**Step Four**

\$9,000.00 Amount originally invested

3,500.00 Amount originally invested

652.50 Interest earned for one year

+ 192.50 Interest earned for one year

\$13,345.00 Total of original investment and earned interest

6. Five years ago, Mr. Thomas bought an antique walnut halltree for \$1,250.00. This year he sold the halltree at auction for a net of \$1,800.00. Discounting any expenses, what was his percentage of profit/loss?

- A. 44% loss
- B. 44% profit
- C. 30.56% loss
- D. 30.56% profit

**Discussion** - The correct answer is B. (44% profit). Remember, you must figure the percentage of profit or loss on the original investment.

**Step One**

\$1,800.00 Amount netted

- 1,250.00 Original amount invested

\$ 550.00 Profit realized

**Step Two**

\$550.00 Profit realized

: \$ 1,250.00 Original investment

.44 or 44% Profit

### 3. CONTRACTS

For contracts, the examination will focus primarily on contract-related terminology and the basic contract requirements as they relate to common auction practice. The examination will also cover questions from a narrative that relate to a blank contract.

**Contract-** A voluntary oral or written mutual agreement by competent parties with mutual promises upon legal consideration, that creates, modifies, or destroys a legal relationship.



**Auction-Listing Contract-** The agreement between the auction house operator or the auctioneer and the seller (or his/her agent) where the parties agree to the offering of certain goods at auction as set forth in the contract. All auction-listing contracts are required by law to be written.

**Auction Sales Contract-** The agreement to sell and buy certain goods between the seller and the buyer, with the auctioneer acting as the seller's agent. The majority of auction sales contracts for personal property are oral. All auction sales and purchase contracts for real property are required to be in writing.

**Valid Contract-** An agreement that meets all legal requirements for a contract, and as such has legal force and binding effect.

**Void Contract-** A contract that is null, having no legal force or binding effect and as such is unenforceable.

**Voidable Contract-** A contract which may be avoided or declared void by one or more parties of that contract.

**Enforceable Contract-** A contract which meets all of the legal requirements for a contract and as such would be enforced by the courts. Contracts in certain situations may be enforceable on one party but not another, such as a contract with a minor (see Legal Capacity).

**Goods-** Real and personal property including chattels, merchandise, and commodities of any form or type which may lawfully be kept or offered for sale.

**Real Property/Real Estate-** Land and all interests therein, including all improvements to the land, such as buildings, fences, and fixtures. Title for real estate sold at auction passes at closing with delivery and acceptance of the deed.

**Personal Property-** All goods and interests other than real property including chattels and commodities. Title for personal property sold at auction passes when the auctioneer accepts the final bid and announces the item sold (at the "fall of the hammer").

**Chattels-** Moveable personal property, such as furniture, automobiles, and livestock.

**Commodities-** Interest in agricultural products, silver, gold, and other products customarily sold or traded in commercial markets, may or may not be chattels.

**Consignor-** The person or authorized agent or entity that consigns goods to an auctioneer. The consignor is usually the seller.

**Consignee-** The auctioneer to whom goods are entrusted by another (the consignor) for sale at auction.

**Spouse-** A husband or wife.

**Encumbrances-** Any binding adverse interest, claim, charge, or liability on an item which in some manner burdens or diminishes the value of that item. The most common encumbrances is a lien.

**Lien-** An adverse claim or charge against an item when that item is being used as collateral for a debt. The auction house operator has a responsibility to act in good faith to determine that any and goods consigned and sold at his/her auction house are free and clear from an and all liens and/or any other encumbrances.

### **Six Basic Requirements for All Contracts to be Valid and Enforceable**

**1. Legal Capacity/Contractual Authority-** All parties to a contract must be of legal age (18), mentally **competent**, and/or not intoxicated. If a bidder lacks legal capacity (such as a minor) then the "sales contract" could be voidable and unenforceable against that bidder. As the seller's agent the auctioneer must act in the seller's best interest and at her/his discretion decide whether to accept the bid. If acting on behalf of another individual, for a corporation, partnership, entity, or an estate that person must be duly authorized.

**2. Legal Purpose-** The purpose, consideration, and goods involved in the contract must be legal.

**3. Offer and Acceptance-** In the auction-listing contract the auctioneer offers to sell the goods at auction and the seller accepts. During bidding the auctioneer "offers" the item or goods and solicits bids. The bids are a series of offers and counter offers. When the auctioneer declares the item sold the auctioneer thereby "accepts", as the seller's agent, the last bid.

**4. Consideration-** Something of "good and valuable consideration" that is exchanged. In the auction-listing contract, this is usually a commission or a fee paid by the seller to the auctioneer.

**5. Reality of Consent-** All parties must enter into the contract voluntarily and without misrepresentation, fraud, duress, menace, undue influence, or mistake. All parties to a contract must have a mutual understanding of the contract contents.

**6. Legal Form-** All auction-listing contracts are required to be in writing. The contract must include the names of all parties and be signed by all appropriate parties (the seller and the auctioneer). The contract must also include all of the aspects of the agreement, in clear and certain terms and be dated. If the seller is married, then marital rights must be released and the spouse must also sign the contract. If there is more than one owner/seller, then all co-owners or partners must sign.

### **Other Basic Requirements for Auction-Listing Contracts**

1. There must be a properly signed auction-listing contract before any advertising.
2. A detailed description of the goods to be sold should be included.
3. Any outstanding liens, encumbrances, and leases must be listed.
4. If buyer's premium is used, then it should be clearly stated in the auction-listing contract.
5. The contract must clearly state who will be responsible for all appropriate auction expenses such as advertising, hauling or moving fees, clean-up fees, the costs of survey, livestock testing, auction preparation and set-up, and auction labor; and when these expenses will be paid.
6. Along with who will pay the advertising expenses, the contract should also include details on the advertising and the advertising budget.
7. The contract must clearly reflect if the auction is absolute, with reserve, or with reserve and the seller reserves the right to bid and comply with the appropriate requirements of the auction law (see the Study Guide section on auction types).
8. If the auction is absolute, it is the auctioneer's and the auction house operator's responsibility to make sure that the seller fully understands the law regarding absolute auctions. Remember all absolute auction listing contracts must state that the auction is "absolute" or "without reserve" and that in no way can the seller bid.
9. Include when the auction accounting and settlement are to take place.
10. If the auction includes real estate, an auctioneer-broker or both an auctioneer and a broker must sign the listing contract. The contract must also conform to all applicable real estate laws and requirements.
11. A copy of the contract must be given to the seller immediately after signing.
12. An auction house operator is required to provide a receipt or receipts to all individuals or businesses placing merchandise with him/her for sale at auction. Also, he/she must keep a copy of each receipt given for merchandise and give a true copy of the receipt or receipts to the owner of the property accepted for sale at auction.

### **LISTING CONTRACT DISCHARGE and TERMINATION**

Generally, most auction listing contracts are usually discharged or terminated in one of the following ways:

1. Completion of the auction followed by a proper accounting and full settlement. This accounting and settlement should occur within 30 days after the sale of an item unless there is a legal requirement that funds be held in escrow longer than 30 days.
2. A contract can be terminated by the mutual agreement of all parties. If the auction has not yet been advertised, the auctioneer or the auction house operator and the seller can mutually agree to cancel the auction and terminate the contract.
3. The withdrawal of the seller or the resignation of the auctioneer or auction house operator if either can demonstrate that the other is not properly discharging his/her duties under the listing contract.
4. By court order.

## **CONTRACT FORMS**

Along with questions covering contract law and principles, you also should be familiar with some of the basic and frequently used auction listing contract formats and forms. On the examination, you will be given an auction listing contract narrative and a blank contract form. You will not be graded on the form itself, but on a series of multiple-choice questions regarding the narrative as it relates to the auction-listing contract form.

### **SAMPLE QUESTION**

1. Which of the following is not one of the six basic requirements for a valid and enforceable contract.

- A. Reality of Consent
- B. Consideration
- C. Offer and Acceptance
- D. Subrogation
- E. All of the above are one of the six basic requirements for a valid and enforceable contract.

**Discussion-** The correct answer is **D.** (Subrogation). Subrogation is not one of the six basic requirements. See the above Study Guide section on contracts.

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## **4. SETTLEMENT and CLOSING STATEMENT**

This section of the examination will test your knowledge of what information is necessary for a proper auction settlement with a seller and your understanding of how to apply this information in a Closing Statement. On the examination, you will use the auction listing contract narrative and a corresponding Closing Statement narrative to properly fill out a Closing Statement. You will not be graded on the Closing Statement itself, but on a series of multiple-choice questions regarding the Closing Statement.

**Closing Statement-** The accounting of an auction between the auction house operator or auctioneer and the seller. This accounting is usually prepared by the auction house operator, auctioneer or auction staff and presented to the seller at the time of settlement. Closing Statements are a list of all the auction related expenses which are to be, according to the listing contract, charged to the seller, listed as debits, and all of the seller's auction income, listed as credits with the difference between the two being the "Net Due Seller". An accounting and settlement are required under The Kentucky Board of Auctioneers Regulation No. 4 (201 KAR 3:055).

Closing Statements vary greatly depending upon the auction house operator and the auctioneer. The following is a version of a basic Closing Statement. For the examination, the applicant should study the following example and seek additional assistance in this area.

The J.L. Smith auction was held on March 21, 1998 at 12465 Highway 462, Fisherville, KY. The Auctioneer was Bill Howard. The auction totaled \$39,742.00. The antiques totaled \$4,362.00, the tractor and other farm equipment brought \$18,950.00, the livestock totaled \$14,175.00, and the remainder sold was household goods. The total sales tax collected was \$298.14. The auction-listing contract stated commission as:

15% on the antiques, 20% on the household goods, 10% on the tractor and farm equipment, and 8% on the livestock.

In the auction-listing contract the seller agreed to pay the advertising expenses not to exceed \$1,000.00. and to pay the livestock testing fee. The livestock-testing fee was \$175.00 and the advertising expenses totaled \$1,160.00. There was an outstanding lien balance of \$5,100.00 on the tractor that is to be paid off in full at the time of settlement. After the auction was complete, the auctioneer advanced J. L. Smith \$4,000.00 from the auction proceeds. All other auction proceeds were placed in the auctioneer's escrow account. The settlement was on April 7, 1998.

Below is an example of a completed Closing Statement for the previous narrative.

Name of Seller	<u>J. L. Smith</u>	Date of Auction	<u>March 21, 1998</u>
Address of Seller	<u>12456 Hwy. 462 Fisherville, Ky.</u>	Date of Settlement	<u>April 7, 1998</u>
Name of Auctioneer	<u>Bill Howard</u>		
<b><u>IN ACCOUNT WITH THE SELLER</u></b>			
	<b>DEBIT</b>	<b>CREDIT</b>	
Gross Sales – Household Goods		\$ 2,255.00	
Gross Sales – Antiques		4,362.00	
Gross Sales – Tractor and Farm Equipment		18,950.00	
Gross Sales – Livestock		14,175.00	
Commission – Household Goods	\$ 451.00		
Commission – Antiques	654.30		
Commission – Farm Equipment	1,895.00		
Commission – Livestock	1,134.00		
Advertising Expense	1,000.00		
Livestock Testing Expense	175.00		
Lien on Tractor – Final Payment	5,100.00		
Advance to Seller on Auction Day	4,000.00		
<b>Sub-totals (total reduction to seller)</b>	<b>\$14,409.30</b>		
<b>Net Due Seller</b>	<b>25,332.70</b>		
<b>Totals</b>	<b><u>\$39,742.00</u></b>	<b><u>\$39,742.00</u></b>	

(double lines indicate balance)

The Closing Statement on the examination may be more complex than the above example. Along with the commission and advertising, you also must know how to handle items such as hauling fees, clean-up expenses, advances to seller, veterinarian fees, clerk and cashier fees, set-up expenses, liens, and real estate closing expenses and fees. The advance in the previous narrative is not an expense of the auction itself, but is an expense to the seller and as such is a debit to the seller. Sales tax is between the auctioneer or auction house operator and the Kentucky Revenue Cabinet and is neither an expense (debit) nor an income (credit) to the seller. Remember, you must follow the auction-listing contract, and expenses to the seller are debits and income to the seller are credits.

## **5. OPENING AND CLOSING REMARKS**

This section of the examination will test your knowledge and ability to give a proper opening statement, the selling of an item and then appropriate closing remarks.

### **OPENING STATEMENT**

Your opening statement should be carefully thought through and well prepared. It must establish your control, involve your audience, and set the tone for the auction, as well as be complete, interesting and businesslike. The content of opening statements are quite varied depending on the auction and the auctioneer.

#### **Basic components for a general purpose opening statement**

1. Obtain the attention of the audience.
2. Welcome the audience to the auction.
3. Introduce yourself as a Kentucky licensed auctioneer and introduce your staff.
4. Introduce of the sellers, if appropriate.
5. Explain the reason for the auction, such as to settle an estate, seller retiring, etc.
6. Describe what will be selling, in general terms, such as a fine group of antiques and collectibles, a well-maintained group of farm equipment, etc.
7. Explain bidder registration.
8. Explain *in detail* the complete terms and conditions, include how (cash, check, etc.) and when payment is to be made, warranty disclaimers (such as “as is”), when does the item become the property and responsibility of the buyer, and what are the removal times and procedures.
9. Explain appropriate bidding procedures, such as tie bids, bidding increments, auctioneer reserving the right to bid, etc.
10. Explain *in detail* sales tax. Remember you must sell a taxable item of personal property. State the tax rate and explain how everything is subject to sales tax unless either the item or purchaser is exempt. Explain these exemptions (see the Study Guide section on sales tax).
11. Explain the basic auction order, such as which type of items sell first, second, third and last or what items will be sold in numerical order.
12. Ask if anyone in the audience has any questions before the selling begins.

### **SELLING**

After you have completed your opening statement, you will then sell your selected item.

1. **Chant and Voice-** Based on the smoothness and rhythm of your chant and the quality of your voice. Your chant should be one that can be maintained throughout a long auction, and does not strain your voice unnecessarily but remains strong and distinctive. Use vocal variety for emphasis, breath deeply, and relax your throat so that you can project your voice rather than shout.
2. **Description of Merchandise-** You must give a description of the item. Identify any special features and describe the item’s condition.
3. **Control** represents your general management of the auction **situation**. It includes your poise and self-confidence as well as your ability to keep the auction properly paced neither too fast or too slow for the audience to follow. It also reflects your ability to keep track of the bidding and the bidders, the pace of the bidding, control of bidding increments, and other general management tasks.

## **CLOSING REMARKS**

In your closing remarks you should thank the bidders and remind them of the point at which items became the responsibility of the purchaser, instructions for payment and removal, and any other appropriate remarks for this auction.

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## **KENTUCKY AUCTIONEER LAW**

This is a copy of the auction-related law that should be thoroughly studied and understood for the examination. You will also find "Study Tips" throughout the law to assist you in your examination preparation. It is important that you know and understand all of the following law in full detail. Remember that the KRS numbers are for reference only and do not have to be memorized.

(Following is the Kentucky Revised Statutes and Regulations regarding auctioneer licensing in Kentucky. This printing does not constitute an official text of these sections from the Kentucky Revised Statutes and is intended for informational purposes only. No representation is made as to the accuracy or completeness of these sections. The certified versions of the Kentucky Revised Statutes should be consulted for all matters requiring reliance on the statutory text. )

### **Auctioneers License Act of 1962 KENTUCKY REVISED STATUTES Chapter 330.000**

#### **330.010 Title.**

KRS 330.010 to 330.200 shall be known and may be cited as the Auctioneers License Law of 1962.

#### **330.020 Definitions for chapter.**

As used in this chapter, unless the context otherwise requires:

- (1) "Apprentice auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (2);
- (2) "Auctioneer" or "principal auctioneer" means any person who offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction, or who sells the same at auction and who is allowed to supervise one (1) or more apprentice auctioneers;
- (3) "Board" means the Board of Auctioneers;
- (4) "Goods" means any chattels, goods, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;
- (5) "Persons" includes individuals, associations, partnerships, and corporations, and the word "persons" shall also include the officers, directors, and employees of a corporation;
- (6) "Auction house" means any commercial establishment at which goods are regularly or customarily offered for sale or sold at public auction, or at which goods are customarily or regularly deposited and accepted, on consignment or otherwise, for sale at public auction at a fixed location, except those establishments which limit goods sold to thoroughbred horses or any interests therein, including, but not limited to, shares and seasons, or tobacco and certified fixed-base livestock markets;

- (7) "Auction house operator" means the individual principally or ultimately responsible for the operation of an auction house, or in whose principal interest the establishment is operated;
- (8) "Livestock auctioneer" means any auctioneer whose professional activities are limited to the sale of livestock at fixed based livestock yards operating under the control and guidance of the United States of America pursuant to the Federal Packers and Stockyards Act; and
- (9) "Tobacco auctioneer" means any auctioneer whose professional activities are limited to the sale of tobacco at fixed based tobacco warehouses operating under the control and guidance of the United States of America through its Department of Agriculture.

### **330.030 Auctioneers license required.**

On and after July 1, 1962, it shall be unlawful for any person to act as an auctioneer or apprentice auctioneer, or to advertise or to assume to act as either within the Commonwealth without a license issued by the Board of Auctioneers.

### **330.033 Limited licenses for livestock and tobacco auctioneers.**

- (1) Beginning July 1, 1993, the Board of Auctioneers shall have the option, at its discretion, of issuing a limited license to livestock auctioneers, in lieu of an auctioneer license. An applicant for a limited license shall be subject to all of the provisions of this chapter and shall apply for and renew his license as auctioneers do, and shall pay the same fees. Applicants, if licensed by the Board of Auctioneers, shall strictly limit professional activities to those of a livestock auctioneer.
- (2) Beginning July 1, 1993, the Board of Auctioneers shall have the option, at its discretion, of issuing a limited license to tobacco auctioneers, in lieu of an auctioneer license. An applicant for a limited license shall be subject to all the provisions of this chapter, and shall apply for and renew his license as auctioneers do, and shall pay the same fees. Applicants, if licensed by the board, shall strictly limit professional activities to those of a tobacco auctioneer.

### **330.035 License required to act as auction house operator.**

- (1) It shall be unlawful for any person to act as an auction house operator, or to assume to act as one within the Commonwealth, without a license issued by the board.
- (2) An auction house operator may be, but is not required to be, a licensed auctioneer or apprentice auctioneer, unless he acts as one. If licensed as an auctioneer, no additional license shall be required of him.
- (3) If an auction house operator conducts and operates more than one (1) auction house, only one (1) auction house operator license shall be required of him, but the appropriate license issuance fee, the appropriate license renewal fee, and recovery fund fee shall be imposed for each location.

**STUDY TIP-** The above definitions are very important. When did the license law go into effect? Understand livestock, tobacco, and auction house operator's licenses.

### **330.040 Exceptions to KRS 330.030.**

- (1) KRS 330.030 shall not apply to: (a) Sales at auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree, or to any sale required by law to be at auction. (b) Sales at auction of any real or personal property conducted exclusively by an individual who personally owns such real or personal property and who did not acquire such real or personal property for resale. This subsection is applicable only to individuals. It does not apply to any other "persons" as defined in KRS 330.020(5), nor does it apply to any officer, director or employee thereof. (c) Any resident or nonresident crier or auctioneer who simply calls for bids and strikes the bargain or who cries or acts as auctioneer in the sale of livestock owned and sold at auction by 4-H Clubs or FFA Clubs or club members, or by any university operated by the Commonwealth of Kentucky. (d) A sale conducted by or on behalf of any political party, church or charitable corporation or association if the individual conducting the sale receives no compensation and does not, by advertising or otherwise, hold himself out as being available to engage in the sale of goods or real estate at auction.
- (2) Notwithstanding the provisions of this section, no licensee under this chapter shall be exempted from any of the provisions of this chapter in connection with or by reason of his participation in any sale excepted under this section.

**330.050 Board of Auctioneers -- Membership -- Qualifications -- Terms -- Compensation -- Powers -- Employees -- Funds -- Publication of list of licensees -- Administrative regulations.**

- (1) There is hereby created a Board of Auctioneers. The Governor shall appoint a board consisting of five (5) members, all of whom immediately prior to the date of their appointment have been residents of the Commonwealth of Kentucky for five (5) years, and four (4) whose vocation for a period of at least five (5) years has been that of an auctioneer. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The term of the members of the board shall be for three (3) years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term.
- (2) At no time shall there be more than three (3) members of the same political faith on the board. Whenever there is a vacancy on the board, the Kentucky Auctioneer Association shall recommend to the Governor at least three (3) names for each auctioneer vacancy, and such appointment or appointments shall be made from the recommendations of the association.
- (3) The board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairman.
- (4) Each member of the board shall receive the sum of twelve thousand dollars (\$12,000) per year, payable twice monthly, and reimbursement for actual and necessary expenses incurred in the performance of official duties.
- (5) The board shall have full authority to employ, and discharge, any personnel, including counsel, as it may deem necessary to efficiently administer and enforce the provisions of this chapter, and it shall outline the duties and fix the compensation of such persons, provided that compensation shall be comparable to the salaries paid other state employees, if any, which the board may deem to be doing similar work. The board shall obtain office space, furniture, stationery, and any other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter. If any items deemed to be reasonably necessary by or which are required by the board are available through vendors under contract with the Commonwealth of Kentucky at less cost than if obtained otherwise, then the items shall be acquired pursuant to the contract. The board shall have full authority to obtain for its members, staff, and employees complete insurance coverage, including, but not limited to, liability and errors and omissions insurance, so long as such insurance concerns the business of the board.
- (6) All fees and charges collected by the board under the provisions of this chapter shall be paid into the State Treasury through the Finance and Administration Cabinet and shall be credited to an agency fund account for the Board of Auctioneers under the provisions of KRS 45.253 and shall be withdrawn or expended as provided in that section, if such payment, credit, withdrawal, or expense provisions do not conflict with any provision of this chapter. The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, fines, penalties, and other income imposed under the provisions of this chapter and paid into the state treasury. The board shall be financially self-sustaining, and if funds permit it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of all licensees who have paid fees pursuant to this chapter.
- (7) The board shall annually publish a list of the names and addresses of all auctioneers, apprentice auctioneers, livestock auctioneers, tobacco auctioneers, and auction house operators licensed by it pursuant to this chapter. This list shall also contain the names of all persons whose licenses have been suspended or revoked within the preceding year, as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.
- (8) The board may from time to time promulgate necessary administrative regulations.

**STUDY TIP** – Pay particular attention in this section to the numbers, such as the number of commissioners/board members, the number of years for their terms, etc. Who appoints the Commissioners? Also, be sure you know paragraphs 5, 6, 7, and 8.

**330.060 Issuance of license -- Conditions -- Examination, fee, exception.**

- (1) Any licenses issued pursuant to this chapter shall be granted only to persons who are found to be of good repute, trustworthy, and competent to transact the business for which the license was granted in such a manner as to safeguard the interest of the public.
- (2) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.



- (3) In addition to proof of honesty, truthfulness, and good reputation, an examination, conducted by the board or its authorized representative shall be held four (4) times each year, and an examination fee of seventy-five dollars (\$75) shall be collected from each applicant for apprentice auctioneer and an examination fee of one hundred dollars (\$100) shall be collected from each applicant for auctioneer and from each applicant for livestock auctioneer, tobacco auctioneer, and auction house operator. Examination fees shall be nonrefundable and shall defray the expenses of processing the application and of conducting the examination. The examinations for auctioneer and apprentice auctioneer shall include questions on ethics, reading, writing, spelling, mathematics, elementary principles of land economics, and a general knowledge of the statutes of Kentucky relating to deeds, mortgages, contracts of sale, agency, leases, auctions, brokerage, and the provisions of this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The examination for auction house operator license shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking to operate auction houses. The examinations for livestock auctioneer and tobacco auctioneer shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking a professional license to operate in those limited fields.
- (4) However, no examination shall be required for the renewal of any present or future license, unless such license has been revoked, suspended, or is allowed to expire without renewal. In any of these cases, the board may, in its discretion, require the applicant to take and pass the written examination before a new license may be issued.

**STUDY TIP** – What is required to attain all licenses, including age, education, and examination fees? How often is the exam given? Know in detail the requirements for all renewals.

**330.070 Qualifications -- License fee -- Continuing education requirement -- License and pocket card -- Duty of auctioneer upon termination of apprentice employment -- Placement of licenses in escrow.**

- (1) In addition to the other qualifications provided for by this chapter, every applicant for any license issued by the board shall be at least eighteen (18) years of age and hold a high school diploma or equivalent. In addition, but subject to the provisions of KRS 330.090, an applicant for an auctioneer's license shall possess a current Kentucky apprentice auctioneer's license and shall have served a bona fide apprenticeship for a period of two (2) years as an apprentice auctioneer in Kentucky, provided that any applicant for auctioneer's license whose apprentice license was granted prior to August 1, 1992, shall be required to serve an apprenticeship of but one (1) year. An applicant for an auctioneer's license who has previously held an auctioneer's license which has been revoked, suspended, or which has expired without renewal may request, and the board may grant, a waiver of the requirement of possession of a current apprentice license.
- (2) Every application for a license, whether as an auctioneer, apprentice auctioneer, livestock auctioneer, tobacco auctioneer, or auction house operator, shall be submitted on forms prepared by the board. Each applicant shall furnish pertinent background data as outlined on those forms.
- (3) The issuance fee for each license issued pursuant to this chapter shall be not more than one hundred dollars (\$100) and the annual renewal fee for each license shall be not more than one hundred dollars (\$100). All licenses shall expire on June thirtieth of each year. In the absence of any reason or condition which might warrant the refusal of the renewing of the license, and upon timely receipt of the written request of the applicant and the annual fee therefor, the board shall issue a new license for each ensuing year.
- (4) Beginning with the renewal of licenses expiring on or after June 30, 1993, the board may require as a condition precedent to the renewal of any license, that all licensees complete continuing auction education up to ten (10) hours per year per licensee. The board may impose different continuing auction education requirements, or none, upon different classifications of licensees under this chapter. The continuing auction education requirements provided for in this subsection shall not apply to those individual auctioneers licensed prior to January 1, 1980.
- (5) The board shall prepare and deliver to each licensee a license and pocket card. The license and pocket card of the apprentice auctioneer shall contain the name and address of his or her principal auctioneer. (a) Auction house operators shall display their licenses conspicuously and at all times in their place of business. All other licenses shall be kept on file in the licensee's place of business. (b) All licensees shall carry their pocket cards with them when performing auctioneering tasks, to be shown upon request. (c) Lost licenses or pocket cards will each be replaced upon request by the licensee and payment of a replacement fee of fifteen dollars (\$15).

- (6) When any apprentice auctioneer is discharged or terminates employment with the auctioneer for any reason, it shall be the immediate duty of the principal auctioneer to deliver or mail by certified mail, return receipt requested, to the board the license of the apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter either directly or indirectly, under authority of his or her license, until the apprentice auctioneer receives a new license bearing a new principal auctioneer's name and address. No more than one (1) license shall be issued to any apprentice auctioneer for the same period of time.
- (7) A licensee may place his or her license in escrow with the board if the licensee does not engage in any auctioneering activity or auction house operations and continues to pay the annual renewal fees during the term of escrow. (a) For each year the license is in escrow, a licensee shall be exempt from the contribution to the auctioneer's education, research, and recovery fund described in KRS 330.192(1)(b) and the continuing education requirement described in subsection (4) of this section. (b) To reactivate a license in escrow, the licensee must meet the current year's continuing education requirement described in subsection (4) of this section and pay a reactivation fee of one hundred dollars (\$100).
- (8) Notice in writing shall be given to the board by each licensee of any change of principal business location or of residence address within ten (10) days of such change. In the event of change of business location address, the board shall issue a new license for the unexpired period. A change of business location without notification to the board within ten (10) days shall automatically suspend or revoke the license of such licensee, as may be ordered in the discretion of the board. Changing a business location or a residence location on its records shall entitle the board to collect ten dollars (\$10).

**STUDY TIP** – How long is the minimum apprenticeship period? Who may request a waiver of this requirement? What is the limit for license issuance and renewal fees for all licenses? Know the requirements for continuing education and what is required for the license and pocket card. Understand what happens when an apprentice is fired or quits. Know how escrowed license works and what is required for a change of address.

### **330.090 Nonresident licensee -- Fees -- Consent to be sued -- Waiver of apprenticeship requirement.**

- (1) A nonresident may become a licensee by conforming to all the conditions of this chapter.
- (2) In every instance the nonresident shall pay the issuance fee and the annual renewal fee by this chapter. The nonresident shall also pay the annual fee to the education, research, and recovery fund pursuant to KRS 330.192 and, in addition, any fee required by KRS 330.095, whether or not the examination requirement is waived by the board pursuant to this chapter.
- (3) In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the Commonwealth, by the service of any summons, process, or pleadings authorized by law on the secretary of the board. The consent shall stipulate and agree that the service of such process, summons, or pleadings on the secretary shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Kentucky. In case any summons, process, or pleadings are served upon the secretary of the board, it shall be by duplicate copies, one of which shall be retained in the office of the board, and the other immediately forwarded by certified mail, return receipt requested, to the last known business address of the applicant against which the summons, process, or pleadings may be directed.
- (4) In the event a nonresident applicant for an auctioneer's license resides in a state which does not prescribe qualifications for licensing as set out in KRS 330.095, the board may waive the apprenticeship requirement set out in KRS 330.070(1) if the nonresident nonreciprocal applicant: (a) Resides so far away as to preclude serving a bona fide apprenticeship under a licensed Kentucky auctioneer; and (b) Demonstrates to the board by affidavit or by other evidence as required by it that his or her experience and competency meet the qualifications to take the examination for auctioneer.

### **330.095 Reciprocal licensing without examination.**

Any nonresident applicant who is a licensee in and who resides in another state or country where the qualifications prescribed at the time of licensing were, in the opinion of the board, equal to those prescribed in the Commonwealth of Kentucky at the date of application, and where reciprocal licensing privileges satisfactory to the board are granted to licensees and residents of the Commonwealth, may be granted a license without an examination. In addition to the fees set out in KRS 330.090, a reciprocal licensee fee shall be collected from each applicant meeting the above requirements. The

fee shall be the amount of the fee charged by the applicant's state or country to a Kentucky resident applying for a reciprocal license or one hundred dollars (\$100), whichever is greater.

**STUDY TIP** – Understand how a nonresident can obtain a license with and without reciprocity and the corresponding fees. How can a nonresident be served a summons or process? Can the apprenticeship requirement for a nonresident be waived?

**330.100 Place of business -- Sign to be erected, requirements, exception -- Application to livestock and tobacco auctioneers.**

- (1) Every auctioneer licensed under this chapter shall maintain a definite place of business in the Commonwealth, except as hereinafter provided, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to the principal office and all branch offices. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall clearly show his name and indicate that he is an auctioneer. The sign shall be placed so that it can easily be observed and read by anyone entering the place of business; provided, however, that if the auctioneer is a nonresident, it is not necessary for him to maintain an active place of business in the Commonwealth if he maintains a place of business in the state where he was originally licensed.
- (2) Every auction house operator licensed under this chapter shall maintain a definite place of business in the Commonwealth, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to all fixed locations. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall contain the name of the auction house operator, the fact that he is licensed, and the name of the auction house, if different than the name of the operator. The sign shall be placed so that it can easily be observed and read by anyone entering the auction house.
- (3) Every livestock auctioneer and tobacco auctioneer licensed under this chapter shall conform to the provisions of subsection (1) of this section. If the livestock auctioneer or tobacco auctioneer does not wish to maintain a separate and definite place of business, he may use one (1) of the fixed base locations where he is operating as such place of business. The board shall be kept advised as to the location pursuant to KRS 330.070.

**STUDY TIP** – Know the requirements for a definite place of business and maintaining a sign for all licensees. What about a nonresident?

**330.110 License suspension, revocation, and other penalties -- Grounds.**

The board may suspend for a period up to four (4) years or revoke the license of any licensee, or levy fines not to exceed five hundred dollars (\$500) against any licensee, or place any licensee on probation for a period of up to three (3) years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Making any substantial misrepresentation;
- (3) Pursuing a continued and flagrant course of misrepresentation or intentionally making false promises or disseminating misleading information through agents or advertising or otherwise;
- (4) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his or her principal auctioneer;
- (5) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own, or failing to keep such funds of others in an escrow or trustee account;
- (6) Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (7) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;
- (8) Violation of any administrative regulation promulgated by the board;
- (9) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by the auctioneer, apprentice auctioneer, or auction house operator;

- (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetency, or untruthfulness;
- (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (12) Failing prior to the sale at public auction or prior to publicly advertising any goods for sale or offering any goods for sale to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives the property for sale;
- (13) After January 1, 1993, failure of any licensee to insert in any advertising pertaining to a particular sale the name of the auctioneer.

**STUDY TIP** – This section is very important. The examination will include many “real life” situations; many of these will test your understanding of this section.

**330.115 Complaints against licensee -- Answer by licensee.**

- (1) All complaints against licensees must be submitted to the board in triplicate, on forms furnished by the board. The complaint must state facts which, if true, would make out a prima facie case against the licensee.
- (2) A copy of the complaint, exhibits attached thereto, and any subsequent pleadings, must be served on the licensee defendant, by the complainant, at the licensee's last known address and must show certification that there has been service by writing to the last known address.
- (3) The defendant licensee must file with the board an answer to the complaint, in triplicate, and properly notarized, on forms secured from the board offices. The answer must be returned to the board within twenty (20) days and a copy of the answer, exhibits attached thereto, as well as any subsequent pleadings, must be served on complainant and must show certification that there has been service by writing to the last known address. Any and all further pleadings in the matter filed with the board by either party must show that a copy has been furnished to the opposing party or parties.

**330.120 Investigation of complaint -- Conditions -- Disposition hearing.**

- (1) The board may upon its own motion, and shall upon the verified written complaint of any person, investigate the actions of any licensee, or auction house operator, or any person who assumes to act as a licensee if the complaint, or complaint together with other evidence presented in connection with it, makes out a prima facie case of a violation of this chapter. If a prima facie case is not established or the violation is deemed inconsequential, the board may immediately dismiss the complaint.
- (2) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

**330.130 Hearing before imposition of disciplinary action -- Notice -- Appeal.**

- (1) Before denying an application for license or before imposing any disciplinary action authorized under KRS 330.110, the board shall set the matter down for an administrative hearing, if a hearing is requested by the applicant or licensee. The hearing shall be conducted in accordance with KRS Chapter 13B. If the applicant or licensee who is the subject of the hearing is an apprentice auctioneer, the board shall also provide notification of the hearing to the auctioneer employing him or whose employ he is about to enter, by mailing notice by certified mail, return receipt requested to the auctioneer's last known business address.
- (2) Any party aggrieved by a final order of the board refusing to grant a license or suspending or revoking a license may appeal the final order to the Circuit Court of the county in which the office of the board is located, in accordance with KRS Chapter 13B.

**STUDY TIP** – How is a complaint handled? Whose forms must be used? What is prima facie? How does a licensee get a copy of the complaint? When and how must a licensee answer a complaint? Know when the Board can and when the Board must investigate a complaint. When can the Board dismiss a complaint or issue a written admonishment? Know how the admonishment process works. Can the Board deny an application or discipline a licensee without a hearing? How is a hearing handled? What about an appeal?

**330.170 Duration and effect of revocation of license.**

- (1) Any licensee who has had his license revoked shall not be issued another license for a period of five (5) years from the date of revocation.
- (2) The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his employment by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within thirty (30) days.

**330.180 Seal -- Records, as evidence, public.**

The board shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original. Public inspection of all records kept in the office of the board under the authority of this chapter shall be as permitted by applicable provisions relating to open records, and under guidelines as shall be prescribed by the board pursuant to those provisions.

**330.190 Proof of license required to recover fees by court action -- No right of recovery by apprentice auctioneer, exception.**

- (1) No person, engaged in the business of or acting in the capacity of any licensee under this chapter shall bring or maintain any action in the courts of the Commonwealth for the collection of compensation for any services performed as such a licensee without first alleging and proving that he was duly licensed at the time the alleged cause of action arose.
- (2) No apprentice auctioneer shall have the right to institute a suit in his own name for the recovery of a commission, fee, or compensation for services as an apprentice auctioneer, but any such act shall be instituted and brought by the licensed auctioneer employing an apprentice auctioneer; provided, however, that this subsection shall not be construed so as to prevent a licensed apprentice auctioneer from suing his employing auctioneer for any compensation, fees, or commissions due him from an auctioneer.

**STUDY TIP** – Know how license revocation works and understand the “proof of license” concept required to recover auctioneer fees. What are the rights of an apprentice to sue for compensation?

**330.192 Auctioneer's education, research, and recovery fund -- Annual charges and assessments -- Purpose -- Use - - Coverage of licensees.**

- (1) (a) There is hereby created and established in the State Treasury the auctioneer's education, research, and recovery fund.
  - (b) In addition to the license fees provided for in KRS 330.070, upon renewal of every license issued pursuant to this chapter, the board shall charge every licensee an amount not to exceed thirty dollars (\$30) per year to be included in the auctioneer's education, research, and recovery fund. Every original applicant for apprentice or auctioneer's license, and every applicant for an auction house operator's license on and after July 15, 1982, shall likewise submit to the board an additional fee of thirty dollars (\$30) to be deposited in the auctioneer's education, research, and recovery fund and shall also be subjected thereafter to an annual renewal fee as of the regular renewal date.
  - (c) In addition to the license fees provided for in KRS 330.070, the board, based upon its own discretion as to need, may assess each licensee upon renewal an amount equal to or less than thirty dollars (\$30) per year, or nothing, but not more. Each original applicant shall pay the original amount of thirty dollars (\$30), but upon renewal shall pay the same fee as other licensees.
- (2) The purposes of the auctioneer's education, research, and recovery fund shall be as follows: (a) When a licensee has been duly found guilty of violating any one (1) or more of the provisions of KRS 330.110, or any one (1) or more of

the administrative regulations duly promulgated by the board, and upon the conclusion of a final order entered by the board or by the courts, if appealed, the board is authorized to pay to the aggrieved person or persons an aggregate amount not to exceed fifty thousand dollars (\$50,000) against any one (1) licensee, provided that the licensee has refused to pay such claim within a period of twenty (20) days of entry of a final order and provided further that the amount or amounts of money in question are certain and liquidated.

(b) The board shall maintain a minimum level of five hundred thousand dollars (\$500,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the State Employees' Retirement System and the interest from said investments shall be deposited to the credit of the research and recovery fund, or, in the discretion of the board, to the agency fund account as set out in KRS 330.050(6). Sufficient liquidity, however, will be maintained so that there will be money available to satisfy any and all claims which may be processed through the board by means of administrative hearing as outlined in this chapter.

(c) The board, in its discretion, may use any funds in excess of the five hundred thousand dollar (\$500,000) level, regardless of whether it is from the auctioneer's education, research, and recovery fund fees or accrued interest thereon, for any of the following purposes:

- (1) To carry out the advancement of education and research in the auction field for the benefit of those licensed under the provisions of this chapter and the improvement and making even more efficient the auction industry as such;
- (2) To underwrite educational seminars, caravans, and other forms of educational projects for the use and benefit generally of auctioneer licensees;
- (3) To establish an auction chair or courses at Kentucky state institutions of higher learning for the purpose of making such courses available to licensees and the general public who may seek same on a college or university level;
- (4) To contract for a particular research project in the auction field for the Commonwealth of Kentucky;
- (5) To sponsor, contract for, and to underwrite any and all other educational and research projects of a similar nature having to do with the advancement of the auction field in Kentucky;
- (6) To cooperate with associations of auctioneers and any other groups for the enlightenment and advancement of the auctioneer licensees of Kentucky; and
- (7) To increase the level of the auctioneer's education, research, and recovery fund above five hundred thousand dollars (\$500,000);
- (8) To augment the regular trust and agency account of the board.

**STUDY TIP –** What is the purpose of the Education, Research and Recovery Fund? What are the first year and renewal fees? What is the limit that can be paid out against a licensee and when can this be paid? Know the minimum level the Board must maintain for recovery and the eight ways in which the Board can use the excess.

(3) (a) In the event that a licensee is found guilty of one (1) or more provisions of KRS 330.110 or of violating one (1) or more of the administrative regulations of the board, and if the amount of the money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by a Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.

(b) If such an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall make a finding as to the monetary damages growing out of the aforesaid violation or violations.

(c) When a final order has been entered by the Circuit Court, Court of Appeals, or Supreme Court, and upon certification to the board, the aggrieved party or parties shall be paid such amount or amounts in the aggregate not to exceed fifty thousand dollars (\$50,000) by the board, and the license held by the licensee against whom the claim was made by the aggrieved party shall be suspended at least until such time as the licensee has reimbursed the auctioneer's education, research, and recovery fund for all amounts paid to the aggrieved party due to the violation of the licensee.

(d) When, upon the final order of the court, the board has paid from the auctioneer's education, research, and recovery fund any sum to the aggrieved party, the board shall be subrogated to all of the rights of the aggrieved

party to the extent of the payment and the aggrieved party shall, to the extent of the payment, assign his right, title, and interest in the judgment to the commission.

(e) Any funds in excess of the five hundred thousand dollar (\$500,000) level and which are not being currently used, may be invested and reinvested as set forth in subsection (2)(b) of this section, or, in the discretion of the board, may be utilized for any of the purposes enumerated in subsection (2)(c) of this section.

(f) All the claims for monetary damages or relief from the auctioneer's education, research, and recovery fund must be made in writing on a proof of loss form submitted to the board within six (6) months of the act of the auctioneer giving rise to the loss. Failure to file such claims within the six (6) month period shall bar the claim. Additional evidence will be submitted by the claimant if required by the board.

(g) Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than fifty thousand dollars (\$50,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, and no matter what the number of claimants be or the size of such claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.

(h) No claims shall be approved under this section for amounts which, in the aggregate, exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.

(4) All categories of licensees under this chapter are covered under the provisions of this section for the benefit and protection of the public.

(5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including, but not limited to, the remedy of obtaining a judgment by all diligent and appropriate means.

**STUDY TIP** – Paragraph 3 gives the limits that can be paid out per licensee and to any one person and how the excess can be invested. What is the time limit for filing a proof of loss form? Note that the claimants must exhaust all other remedies prior to filing under this section.

### **330.200 Municipal right to license auctioneers and auction house operators.**

No municipality or other political subdivision shall regulate, tax, or license any licensee except for those administrative regulations, taxes, or licenses which may be reasonably imposed or required among all persons engaged in business generally.

### **330.210 Sale of horses by auction.**

Notwithstanding any contrary provisions of law and in furtherance of the policies set forth in KRS 355.2-328, at any auction sale of horses, the auctioneer:

- (1) May receive bids from the seller, consignor, or his agent, disclosed or undisclosed, if notice has been given in the terms and conditions governing the sale, or otherwise, that liberty for such bidding has been reserved by seller;
- (2) Shall conduct the sale with respect to each lot or parcel on a with-reserve basis unless the seller has authorized the auctioneer, in writing, to conduct the sale on a without-reserve basis, in which event the auctioneer shall announce, in explicit terms, that the goods are being sold without reserve; and
- (3) Shall not be required to announce at any with-reserve sale when the reserve is attained.

**STUDY TIP** – Know how local governments can and cannot tax or license auctioneers and auction house operators. The paragraph on the sale of horses is reflected in the next section.

### **330.220 "Absolute auction" defined -- "Reserve auction" defined -- Bids by seller.**

- (1) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any goods at absolute auction unless:

- (a) There are no liens or encumbrances on the goods, except current tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
  - (b) There is the bona fide intention at the time of the advertising and at the time of the auction sale, to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the high bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods would not be transferred to the high bidder; and
  - (c) The auction listing contract contains a binding requirement that the sale be conducted without reserve, by specific inclusion of an acknowledgment by the seller that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.
- (2) Compliance with subsection (1) of this section shall not prohibit:
- (a) A secured party or other lienholder who is not the seller from bidding at an absolute auction sale, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or
  - (b) Any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution; or
  - (c) The inclusion of nonmisleading advertising of certain goods to be sold at "absolute auction" and the nonmisleading advertising of certain goods to be sold at auction with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent through equal or appropriate emphasis, which goods are being sold by each method.
- (3) Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the goods are in explicit terms put up at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the goods may be put up subject to the seller's confirmation or subject to a certain reserve price.
- (4) (a) The provisions of this chapter shall not prohibit any licensee from bona fide bidding on his own behalf at any auction sale, whether absolute or with reserve, provided that his option to do so shall have been fully disclosed, including disclosure to the seller.
- (b) Except as provided in subsection (2) of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his behalf. No licensee shall knowingly receive such a bid by or on behalf of the seller at an absolute auction.
  - (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has been made that liberty for such bidding is retained. No licensee shall knowingly receive such a bid in the absence of full disclosure.
  - (d) There shall be no requirement at a with reserve sale that the reserve be announced when it is attained.

### **330.990 Penalties.**

Any person who willfully violates any provision of KRS Chapter 330 or any rule or regulation promulgated in accordance with KRS Chapter 330 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for a term not to exceed ninety (90) days, or both.

**STUDY TIP** – This section is very important. Be sure you know and understand this section in detail. Refer to the Study Guide section on auction law and auction types for assistance. Also, know the penalties for violating KRS 330.



## KENTUCKY ADMINISTRATIVE REGULATIONS

### **201 KAR 3:005. Name required on advertising.**

Any advertisements pertaining to a particular auction sale must contain the name of the principal auctioneer and indicate that he is an auctioneer.

### **201 KAR 3:015. Experience requirements for principal auctioneers.**

Section 1. Upon application for a principal auctioneer's license, each apprentice auctioneer must present a statement signed by his principal auctioneer stating that said apprentice has participated as bid caller in at least ten (10) auction sales during the twelve (12) months prior to submitting the application.

### **201 KAR 3:025. Reciprocity requirements.**

Section 1. Due to the fact that some states do not require licensees to serve an apprenticeship, reciprocity with any state that does not require an apprenticeship shall be granted only after a licensee in that state who is a nonresident of Kentucky has held his license for a minimum of one (1) year.

### **201 KAR 3:035. Real estate sales by auction.**

Section 1. Pursuant to an Opinion of the Attorney General, OAG-759, dated October 20, 1965, which held that a licensed real estate broker may not sell real estate at auction without an auctioneer's license; and a licensed auctioneer may not sell real estate at auction without a real estate broker's license, it shall be considered improper dealing for an auctioneer to engage in any practice to obtain or negotiate a contract for the sale of real estate at auction, or advertise, or conduct a sale of real estate at auction without a license issued by the Kentucky State Real Estate Commission. However, nothing contained in this administrative regulation shall prevent a licensed real estate broker and a licensed auctioneer from participating jointly in such transactions for the sale of real estate at auction.

### **201 KAR 3:045. Recordkeeping and accounting.**

Section 1. (1) Any principal or apprentice auctioneer licensed by the Kentucky Board of Auctioneers shall be required to provide a receipt or receipts to all individuals or businesses placing merchandise with him for sale by him at auction. Every apprentice and principal auctioneer shall keep a copy of each receipt given for merchandise as provided herein, and shall give a true copy of said receipts to the owner of the property accepted for sale at auction.

(2) A principal auctioneer shall further render an accounting and settlement with the seller of any property sold at auction within thirty (30) days after the conclusion of such sale unless there is a legal requirement that funds held in escrow by that principal auctioneer be held longer than said thirty (30) days.

### **201 KAR 3:055. Apprenticeship residency requirements.**

Section 1. In the absence of a showing of special circumstances satisfactory to the board, no principal auctioneer shall sponsor an apprentice whose residence is located outside a fifty (50) mile radius of the principal auctioneer's main or branch office.

### **201 KAR 3:065. Maintaining a license while on active military duty.**

Section 1. Any individual holding a valid apprentice or principal Kentucky auctioneer license who enters the military service of the United States shall not be required to contribute to the Auctioneer Education Research and Recovery Fund or maintain his license during the period that he is on active duty for said military service. Within sixty (60) days of such individual's honorable discharge from the service, he may request reinstatement of his license and said request shall be granted by the board.

## **EXCERPT FROM UNIFORM COMMERCIAL CODE**

### **ARTICLES ON SALES**

#### **KRS 355.2-328 Sale By Auction.**

- 1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
- 2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- 3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
- 4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

<p><b>STUDY TIP</b> – Know all seven regulations in detail. Be sure to know fully and understand the “Sale by Auction” section. This section along with KRS 330.220 defines and explains absolute auction, auction with reserve, auction with reserve and the seller reserving the right to bid, and certain bidding procedures. Again, refer to the Study Guide section on auction law and auction types for assistance.</p>
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